



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Home Care Medical, Inc.

File: B-245189

Date: August 21, 1991

Sheila M. Reynolds, Esq., Quarles & Brady, for the protester, Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging rejection of bid as nonresponsive for failure to include prices for all option years called for by the invitation for bids (IFB) is dismissed as untimely where the IFB failed to state whether option year prices would be evaluated. Since the IFB thus was ambiguous on its face, protester was on notice of defect in the IFB and should have raised any objection on this ground before bid opening; it could not simply make assumptions regarding the meaning of the IFB and then expect relief when the agency did not act in the manner the protester assumed it would in regard to evaluation of option year prices.

DECISION

Home Care Medical, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 695-54-91, issued by the Department of Veterans Affairs (VA) for home oxygen service.

We dismiss the protest.

The IFB called for prices on 28 items for a base year and 4 option years. Home Care entered prices for the base year and first 2 option years only. VA rejected its bid as nonresponsive based on its failure to include prices for the last 2 option years. In its protest, Home Care argues that it assumed that pricing for the option years was optional because the IFB did not explicitly state that bidders were required to price all 5 years.

The question of a bid's responsiveness involves whether the bid, at bid opening, represents an offer to comply with the IFB's material terms, which include the requirement for a

firm, fixed price. Huff & Huff Serv. Corp., B-233740.5, Feb. 9, 1990, 90-1 CPD ¶ 167. The requirement for fixed prices extends to options where the IFB requires prices for those items and provides that such prices will be evaluated to determine the awardee. Id. Here, as protester states, the IFB did not indicate whether option year prices would be evaluated.

When an IFB which requests option prices fails to state whether the evaluation of bids will include or exclude option prices, the IFB on its face is unclear as to whether options will be evaluated. See Golden North Van Lines, Inc., 69 Comp. Gen. 610 (1990), 90-2 CPD ¶ 44. Thus, Home Care could not reasonably assume that the option year prices would not be evaluated, but instead should have attempted to clarify the ambiguity by raising the issue before bid opening. See Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(1)); Golden North Van Lines, Inc., 69 Comp. Gen. 610, supra. Since Home Care failed to file a timely protest raising the issue, the firm could not simply make assumptions regarding the meaning of the IFB with respect to the evaluation of options, and then expect relief when the agency did not act in the manner Home Care assumed it would. See General Eng'g and Machine Works, B-223929, Oct. 27, 1986, 86-2 CPD ¶ 477.

Nevertheless, since the IFB clearly was defective for failure to specify whether options were to be evaluated, we are by separate letter advising VA of the defect so that it may address the matter as appropriate. See DynCorp, B-240980.2, Oct. 17, 1990, 90 Comp. Gen. ___, 90-2 CPD ¶ 310.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel